

REMARKS

Amendments to the Claims

Claims 40-46 are pending. Claim 44 has been amended to depend from claim 40 so as to maintain dependence upon a pending claim. No new matter has been added.

Response to Restriction Requirement

In the restriction requirement issued July 22, 2008, the Examiner required election between two groups:

Group I: claims 40-43, drawn to a process of making crystals free from alkaline residue; and

Group II: claims 44-46, drawn to a ready-for-use, stable, pharmaceutical formulation.

In order to be responsive to the restriction requirement, Applicants hereby elect the subject matter of Group II, claims 44-46, drawn to a ready-for-use, stable, pharmaceutical formulation. This election is made with traverse.

The Examiner asserts that the claims 1-39 have no common “special technical feature” since there are different special technical features for composition claims and for method of treatment claims. Applicants submit that under rule 13.2 of the PCT, a “special technical feature” is “those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art.” Furthermore, whether or not any particular technical feature makes a “contribution” over the prior art, and therefore constitutes a “special technical feature,” is considered with respect to novelty and inventive step. MPEP 1850.

Applicants submit that all of the subject matter of the present invention is linked by the special technical feature of crystals of 9-((1,3-DIHYDROXYPROPAN- 2-YLOXY) METHYL)-2-AMINO-1HPURIN1- 6-(9H)-ONE that are free from alkaline residues and are formulated in a sodium chloride or glucose solution. When so formulated, the formulation as set forth in claim 44 is unexpectedly stable for a period up to 24 months at ambient temperatures to 30°C. (See Tables I-IV of the Specification.) The Examiner has cited no prior art that establishes that this feature of the invention is not novel or not inventive. Accordingly, the standing restriction requirement should be withdrawn in its entirety and all of the present claims 40-46 should be examined together in the present application.

Applicants note that Examiner has required restriction between product and process claims. (See e.g., claims 40-46). Since Applicants herein elect claims directed to the product, if the product claims are subsequently found allowable, Applicants request that withdrawn process claims that depend from or otherwise require all the limitations of the product claims be considered for rejoinder.

Applicants further request that in the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims be withdrawn, and that the rejoined process claims be fully examined for patentability in accordance with 37 C.F.R. 1.104. See MPEP §821.04(b).

- Attached is a Petition for Extension of Time.
- Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

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